

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICTOR PACHECO,
Petitioner,
v.

No. CR-01-20050-JW

**ORDER¹ DENYING PETITION FOR
RECONSIDERATION**

[Re: Docket Item No. 340]

UNITED STATES OF AMERICA,
Respondent

Presently before the court is the petition (“Petition”) of Victor Pacheco (“Mr. Pacheco”), requesting the court reconsider its November 10, 2011 Order denying his Rule 36 Petition to Amend Judgment (“Order”). See Docket Item Nos. 337, 340. Mr. Pacheco brings this Petition pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, on the basis that the court failed to take into consideration U.S.S.G. § 5G1.3(b) in issuing its Order. See Petition, Docket Item No. 340.

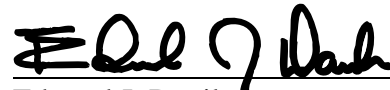
“Under [Federal] Rule [of Civil Procedure] 59(e), it is appropriate to alter or amend a judgment if (1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in controlling law.” United Nat’l Ins. Co. v. Spectrum Worldwide, Inc., 555 F.3d 772, 780 (9th Cir. 2009) (internal quotation marks omitted).

¹ This disposition is not designated for publication in the official reports.

1 Mr. Pacheco presents no newly discovered evidence, and there has been no intervening
2 change in controlling law. To the extent that he argues the court committed clear error or made an
3 initial decision that was manifestly unjust, the court disagrees. Mr. Pacheco contends that “Judge
4 Ware intended to apply §5G1.3(b)(1) & (2) but the judgment only showed his intent concerning
5 §5G1.3(b)(2).” Id. This court’s prior Order explained that the language of the January 24, 2005
6 Judgment is unambiguous. Docket No. 337. Speculation as to Judge Ware’s intentions does not fall
7 within the ambit of Rule 36 of the Federal Rules of Criminal Procedure. For all of these reasons,
8 Mr. Pacheco’s Petition for Reconsideration is DENIED.

9 **IT IS SO ORDERED.**

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11 Dated: December 7, 2011



Edward J. Davila
UNITED STATES DISTRICT JUDGE